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MAY 25 2005

DUPLICATE
FILED
LOS ANGELES SUPERIOR COURT

MAY 26 2005

LOS ANGELES JUDICIAL DIST.
JOHN A. CLARKE, CLERK
BY DAARO DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

11 IN RE: LINCOLN MEMORIAL PARK
12 LITIGATION

13 THELMA BINFORD, et. al.,

14 Plaintiffs,

15 vs.

16 LINCOLN MEMORIAL PARK, INC., et al.,

17 Defendants.

18 AND RELATED AND CONSOLIDATED
19 ACTIONS

MASTER CASE NO. BC 133 643
Honorable Richard L. Fruin
Department 15

CLASS ACTION

**~~PROPOSED~~ FINAL ORDER AND
JUDGMENT APPROVING THE
SETTLEMENT**

20 The Class Plaintiffs and the Cemetery Defendants have entered into a settlement which is
21 subject to the review of this Court pursuant to California Code of Civil Procedure §382 and
22 California Rules of Court, Rule 1859. Class Plaintiffs have now moved pursuant to California Rules
23 of Court, Rule 1859(c) for final approval of the proposed settlement as fair, reasonable, and
24 adequate. The Court has reviewed and considered the settlement, the Application for Final Approval
25 of Settlement, the papers, evidence, to the proposed settlement and the argument submitted in
26 support of and in opposition or objection to the proposed settlement at the hearings held on April 4,
27 2005 and May 23, 2005, and has considered all other materials and information it deemed necessary
28 for its decision.

1 Based on such review and consideration **THE COURT HEREBY FINDS AND ORDERS**

2 **THAT:**

3 1. The proposed *cy pres* settlement is appropriate under *California Code of Civil*
4 *Procedure* §§38 and 384, and for purposes of the determination of final approval of the *cy pres*
5 settlement, this Court makes the findings set forth herein.

6 2. The proposed Settlement has been negotiated by the parties at arm's length with the
7 assistance of a disinterested judicial officer mediator, is the product of serious, informed, non-
8 collusive and non-overreaching negotiations, which followed vigorously-contested litigation, and
9 has no apparent deficiencies.

10 3. Before entering into the Settlement, and during the settlement process, the parties
11 exchanged extensive documents and information, including taking over 400 depositions Class
12 Counsel conducted a thorough investigation of the facts and law pertinent to the claims in this action.

13 4. The Court, on June 12, 2000, certified the Class with Subclasses defined as: (1)
14 Maintenance Subclass (Failure to properly maintain the cemetery); and, (2) Encroachment Subclass
15 (Failure to provide appropriate grave space for which Defendants had a duty to provide).

16 5. The causes of action that were certified by the Court on June 12, 2000 for the
17 Subclasses are: (1) Maintenance Subclass: Breach of Contract, Breach of the Covenant of Good
18 Faith and Fair Dealing, Negligence and Negligence Per Se; and, (2) Encroachment Subclass: Breach
19 of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Negligence and Negligence
20 Per Se.

21 6. The Court on June 12, 2000, determined the Class Period for each of the Subclasses
22 to be as follows: (1) Maintenance Subclass: The class period for this subclass is from May 29, 1995
23 through August 10, 1995; and (2) Encroachment Subclass: The class period for this subclass is
24 from the date of a burial to August 10, 1995.

25 7. The Class is defined as: All persons who: (1) are or were vested with the right,
26 pursuant to *California Health & Safety Code* §7100, to control the disposition of the remains of any
27 decedent buried at Lincoln; (2) contracted with any Person for present or pre-need funeral and/or
28 burial services at Lincoln; (3) are grandparents, parents, spouses, siblings, children, grandchildren

1 of any decedent buried at Lincoln; and/or (4) close family members who lived in the household of
 2 the decedent at the time of death (within the meaning set forth in *Christensen v. Superior Court*,
 3 (1991) 54 Cal.3d 882 and its progeny).

4 8. Notice has been given in the manner directed by the Court's Preliminary Approval
 5 Order and that notice meets the requirements of California law, the *Federal Rules of Civil Procedure*
 6 Rule 23, the United States Constitution, due process, and constitutes the best notice to the members
 7 of the Class practicable under the circumstances. The Notice fully and accurately informed the Class
 8 Members of all material elements of the proposed *cy pres* Settlement and their opportunity to object
 9 to or comment thereon. Accordingly, this Court determines that all members of the Class are bound
 10 by this Judgment and Final Order.

11 9. The twenty (20) timely written objections submitted by certain Class Members do
 12 not warrant the denial of final approval and are overruled.

13 10. The timely oral objections of Class Members at the hearings on April 4, 2005 and
 14 May 23, 2005, do not warrant the denial of final approval and are overruled.

15 11. Any and all untimely objections are hereby stricken.

16 12. The *Second Amended Fifth Revised Class Action Complaint* in this action is
 17 dismissed with prejudice.

18 13. Class Plaintiffs are ordered to pay from the settlement fund the following: (1)
 19 \$56,000.00 to the Department of Consumer Affairs against a lien reimbursing the Endowment Care
 20 Fund; (2) \$133,131,.00 to the Claims Administrator for prior services performed, \$20,306.00 for the
 21 maintenance of the database, the website, monitoring the voice mail and for the printing and mailing
 22 of the Class Notice regarding the *cy pres* settlement notice and directs Class Plaintiffs to hold
 23 \$5,000.00 for additional professional fees of the Claims Administrator subject to an application to
 24 and order from the Court; and (3) \$12,000.00 to David Pasternak, Esq. For fees and costs associated
 25 with his appointment by the Court as counsel for the Court Appointed Receiver of the cemetery
 26 during part of the Class period.

27 14. The Class and the Cemetery Defendants are permanently enjoined and barred from
 28 commencing or prosecuting any action in any forum involving any Settled Claim against any

1 Released Party. All Settled Claims are hereby compromised, settled, released, discharged, and
2 dismissed on the merits and with prejudice. This provision is intended to fully and completely
3 implement the release agreed to by the parties.

4 15. Nothing in this Final Order and Judgment, nor any action taken by Defendant or any
5 other party pursuant to the settlement, shall be considered or used in any forum as an admission of
6 or as in any other way probative of any allegation of fault, wrongdoing, or liability on the part of
7 Defendant or any other party covered by the proposed settlement.

8 16. Without affecting the finality of this Judgment and pursuant to California Rules of
9 Court, Rule 1859(h), this Court shall retain exclusive and continuing jurisdiction over this action and
10 the parties, including all members of the Class, for purposes of supervising, administering,
11 implementing, enforcing, construction, and interpreting the Settlement, the restoration process
12 thereunder, and this Judgment.

13 17. Under Code of Civil Procedure §§578,579 and 664.6, this Court, in the interest of
14 justice, and there being no just reason for delay, expressly directs the Clerk of this Court to enter this
15 Final Order and Judgment, and hereby decrees, that upon entry, it be deemed as a final judgment
16 with respect to all claims by all members of the Settlement Class against the settling Defendants and
17 the other released parties, in accordance with the terms of the Settlement.

18 18. The proposed *cy pres* settlement is clearly fair, reasonable, and adequate, in the best
19 interests of the Settlement Class as a whole, and represents the best possible outcome in light of the
20 defenses raised and the insurance coverage issues involved, and as such, grants final approval and
21 directs that the Settlement be consummated in accordance with its terms and conditions.

22
23 Date: May 26, 2005

By: Richard L. Fruin
The Honorable Richard L. Fruin
Judge of the Los Angeles County Superior
Court

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